



## DEPARTMENT OF VETERANS AFFAIRS

8320-01

### 48 CFR Parts 852 and 871

#### RIN 2900-AQ76

### VA Acquisition Regulation: Loan Guaranty and Vocational Rehabilitation and Employment Programs

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in Federal Acquisition Regulation (FAR), to remove procedural guidance that is internal to VA and move it to the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, will publish them in the Federal Register. VA will combine related topics, as appropriate. This rulemaking revises VAAR coverage concerning Loan Guaranty and Vocational Rehabilitation and Employment Programs, as well as an affected part concerning Solicitation Provisions and Contract Clauses.

**DATES:** Comments must be received on or before [Insert date 60 days after date of publication in the *FEDERAL REGISTER*].

**ADDRESSES:** Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1064, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to “RIN 2900-AQ76 VA Acquisition Regulation: Loan Guaranty and Vocational Rehabilitation and Employment Programs.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street, NW, Washington, DC 20001, (202) 382-2787. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are consistent with the FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

### Discussion and Analysis

VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authority that are removed from the VAAR will be

included in VA Acquisition Manual (VAAM) as internal departmental guidance. The VAAM is being created in parallel with these revisions to the VAAR and is not subject to the rulemaking process as they are internal VA procedures and guidance. The VAAM will not be finalized until corresponding VAAR parts are finalized, and therefore the VAAM is not yet available online.

#### VAAR PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

We propose to revise section 852.271-72, Time Spent by Counselee in Counseling Process, to capitalize all principal words in the title and the word “Contractor” in the text, to replace the word “give” with the phrase “participate or engage in additional sessions or expend” of provisions and clauses, and to place a comma after the word “information” in the text.

We propose to revise section 852.271-73, Use and Publication of Counseling Results, to capitalize all principal words in the title and the word “Contractor” in the text, and to place commas after the words “contract” and “thereto” in the text.

We propose to revise the title and text of section 852.271-74, Inspection, to change the title to “Inspection of Instruction, Counseling or Testing Operations,” to capitalize all principal words in the title and the words “Contractor” and “Veteran” in the text, to add the word “shall” after the word “Contractor” and the word “to” before the first word “examine” in the text, and to add the phrase “along with any other rights to examine records and conduct inspections in accordance with the Federal Acquisition Regulation and clauses contained in the contract or order.”

We propose to remove and reserve section 852.271-75, Extension of contract period, since it duplicates FAR procedural coverage.

#### VAAR PART 871— LOAN GUARANTY AND VOCATIONAL REHABILITATION AND EMPLOYMENT PROGRAMS

We propose to remove in its entirety and reserve subpart 871.1, Loan Guaranty and Direct Loan Programs, since subpart's rules are outdated. VA no longer contracts with numerous contractors on a case-by-case basis for the repair and preservation of properties acquired under chapter 37, title 38, U.S.C. VA has awarded a national property management contract that is governed by other provisions of the FAR and VAAR. Because of this removal, we propose to revise the title of the part to Vocational Rehabilitation and Employment Programs.

In section 871.200, Scope of subpart, we propose to delete the reference to Title 10 chapters as they do not apply to VA. We also proposed to remove the following sections since they are more related to matters of program management than acquisition, or they duplicate coverage in FAR: 871.201-2, Requirements when contracts are not required; 871.201-3, Medical services; 871.201-4, Letter contracts; 871.202, Marking and release of supplies; 871.203, Renewals or supplements to contracts; and 871.204, Guaranteed payment. We propose to revise section 871.210 to retitle it as "Prohibition on advertising—training of Veterans," and to remove all programmatic language, but to retain the text of the paragraph prohibiting use of the training facilities in any way to advertise the institution. We propose to remove section 871.211, Information concerning correspondence courses, in its entirety since it is also programmatic information not relevant to acquisition. With the removal of 871.211, we propose to

renumber 871.212 to 871.211, and to update paragraph (a)(3) to revise the title of clause 852.271-74 to “Inspection of Instruction, Counseling or Testing Operations.”

#### Executive Orders 12866, 13563 and 13771

Executive Orders (EOs) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site at <http://www.va.gov/orpm/>, by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date.”

This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

#### Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

#### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rulemaking does not change VA’s policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the proposed rule would not have an economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal Governments or on the private sector.

#### List of Subjects

#### 48 CFR Parts 852

Government procurement, Reporting and recordkeeping requirements.

#### 48 CFR Part 871

Government procurement, Loan programs-social programs, Loan programs-veterans, Reporting and recordkeeping requirements, Vocational rehabilitation.



Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on February 20, 2020, for publication.

***Consuela Benjamin,***

Regulations Development Coordinator,  
Office of Regulation Policy & Management,  
Office of the Secretary,  
Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 48 CFR to revise parts 852 and 871 to read as follows:

## **PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

1. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 8127-8128, and 8151-8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### **Subpart 852.2—Texts of Provisions and Clauses**

2. Subpart 852.2 is revised to read as follows:

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#### **852.271-72 Time Spent by Counselee in Counseling Process.**

As prescribed in 871.211, insert the following clause:

##### **TIME SPENT BY COUNSELEE IN COUNSELING PROCESS (DATE)**

The Contractor agrees that no counselee referred under the provisions of this agreement will be required to participate or engage in additional sessions or expend any extra time in connection with the counseling process, to supply test results or other information, for purposes other than those specified in this contract.

(End of clause)

#### **852.271-73 Use and Publication of Counseling Results.**

As prescribed in 871.211, insert the following clause:

##### **USE AND PUBLICATION OF COUNSELING RESULTS (DATE)**

The Contractor agrees that none of the information or data gathered in connection with the services specified in this contract, or studies or materials based thereon or

relating thereto, will be publicized without the prior approval of the Under Secretary for Benefits or his/her designee.

(End of clause)

**852.271-74 Inspection of Instruction, Counseling or Testing Operations.**

As prescribed in 871.211, insert the following clause:

**INSPECTION OF INSTRUCTION, COUNSELING OR TESTING OPERATIONS (DATE)**

The Contractor shall permit the duly authorized representative of the Department of Veterans Affairs to visit the place of instruction or the counseling and testing operations as may be necessary and to examine the training facilities, the work of the Veterans in training under this contract, and the records of these operations, along with any other rights to examine records and conduct inspections in accordance with the Federal Acquisition Regulation and clauses contained in the contract or order.

(End of clause)

**852.271-75 [Reserved]**

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**PART 871—VOCATIONAL REHABILITATION AND EMPLOYMENT PROGRAMS**

3. Part 871 is revised to read as follows:

**Subpart 871.1 [RESERVED]**

**Subpart 871.2—Vocational Rehabilitation and Employment Service**

871.200 Scope of subpart.

871.201 General.

871.201-1 Requirements for the use of contracts.

871.205 Proration of charges.

871.206 Other fees and charges.

871.207 Payment of tuition or fees.

871.208 Rehabilitation facilities.

871.209 Records and reports.

871.210 Prohibition on advertising—training of Veterans.

871.211 Contract clauses.

Authority: 38 U.S.C. chapter 31; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

## **Subpart 871.1—[RESERVED]**

## **Subpart 871.2—Vocational Rehabilitation and Employment Service**

### **871.200 Scope of subpart.**

This subpart establishes policy and procedures for the vocational rehabilitation and employment services as it pertains to the following:

- (a) Contracts for training and rehabilitation services.
- (b) Approval of institutions (including rehabilitation facilities), training establishments, and employers under 38 U.S.C. chapter 31.
- (c) Contracts for counseling services under 38 U.S.C. chapters 30, 31, 32, 35, and 36.

### **871.201 General.**

#### **871.201-1 Requirements for the use of contracts.**

The costs for tuition, fees, books, supplies, and other expenses are allowable under a contract with an institution, training establishment, or employer for the training and rehabilitation of eligible Veterans under 38 U.S.C. chapter 31, provided the services meet the conditions in the following definitions:

- (a) *Courses of instruction by correspondence* means a course of education or training conducted by mail consisting of regular lessons or reading assignments, the preparation of required written work that involves the application of principles studied in each lesson, the correction of assigned work with such suggestions or recommendation

as may be necessary to instruct the student, the keeping of student achievement records, and issuance of a diploma, certificate, or other evidence to the student upon satisfactorily completing the requirements of the course.

(b) *Special services or special courses* means those services or courses that VA requests that are supplementary to those the institution customarily provides for similarly circumstanced non-Veteran students and that the contracting officer considers to be necessary for the rehabilitation of the trainee.

#### **871.205 Proration of charges.**

A contract must include the exact formula agreed on for the proration of charges in the event that the Veteran's program is interrupted or discontinued before the end of the term, semester, quarter, or other period, or the program is completed in less time than stated in the contract.

#### **871.206 Other fees and charges.**

VA may pay fees and other charges that are not prescribed by law but are required by nongovernmental organizations, such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership incidental to training on the job or to obtaining employment during a period in which the Veteran is a chapter 31 participant, provided there are no facilities feasibly available where the necessary training can be feasibly accomplished or employment obtained without paying such charges. Payment for such fees must be made in accordance with part 813.

#### **871.207 Payment of tuition or fees.**

(a) Contracts, agreements, or arrangements requiring the payment of tuition or fees must provide either of the following:

(1) Payment for tuition or fees must be made in arrears and must be prorated in installments over the school year or the length of the course.

(2) An institution may be paid in accordance with paragraph (b) of this section, if the institution operates on a regular term, quarter, or semester basis and normally accepts students only at the beginning of the term, quarter, or semester and if the institution is one of the following:

(i) An institution of higher learning that uses a standard unit of credit recognized by accrediting associations. Such institutions include those that are members of recognized national or regional educational accrediting associations, and those that, although not members of such accrediting associations, grant standard units of credit acceptable at full value without examination by collegiate institutions that are members of national or regional accrediting associations.

(ii) A public tax-supported institution.

(iii) An institution operated and controlled by a State, county, or local board of education.

(b) An institution that meets the exceptions of paragraph (a)(2) of this section and that has a refund policy providing for a graduated scale of charges for purposes of determining refunds may be paid part or all such tuitions or fees for a term, quarter, or other period of enrollment immediately following the date on which the refund expires.

(c) Proration of charges does not apply to a fee for noncontinuing service, such as a registration fee, etc.

(d) The period for which payment of charges may be made is the period of actual enrollment and is subject to the following:

(1) The effective date is the date of the trainee's entrance into training status, except that payment may be made for an entire semester, quarter, or term in institutions operating on that basis if the trainee enters no later than the final date set by the institution for enrolling for full credit.

(2) In those cases where the institution has not set a final date for enrolling for full credit or does not set a date acceptable to VA, payment may be prorated on the basis of attendance, regardless of the refund policy.

(3) If an institution customarily charges for the amount of credit or number of hours of attendance for which a trainee enrolls, payment may be made on that basis when a trainee enrolls after the final date permitted for carrying full credit for the semester or term.

#### **871.208 Rehabilitation facilities.**

Charges by rehabilitation facilities for the rehabilitation services provided under 38 U.S.C. chapter 31 are paid in the same manner as charges for educational and vocational services through contract, agreement, or other arrangement.

#### **871.209 Records and reports.**

Contracts, agreements, or arrangements must provide for the number and frequency of reports, adequate financial records to support payment for each trainee, and maintenance of attendance and progress records. Such records must be preserved for a period of three years.

#### **871.210 Prohibition on advertising—training of Veterans.**

The training of persons under a VA contract or the fact that the United States is using the facilities of the institution for training Veterans must not be used in any way to

advertise the institution. References in the advertising media or correspondence of the institution shall be limited to a list of courses under 38 U.S.C. chapter 31 and must not be directed or pointed specifically to Veterans.

**871.211 Contract clauses.**

(a) Contracting officers must use the following clauses, as appropriate, in solicitations and contracts for vocational rehabilitation and employment services as they pertain to training and rehabilitation services and contracts for counseling services:

- (1) 852.271-72, Time Spent by Counselee in Counseling Process.
- (2) 852.271-73, Use and Publication of Counseling Results.
- (3) 852.271-74, Inspection of Instruction, Counseling or Testing Operations.

(b) See 837.110-70(a) for clause 852.237-74, Non-Discrimination in Service Delivery.

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